

**Not Intended for Print Publication**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	Case No. 1:04CR00056
v.	)	
	)	<b>OPINION AND ORDER</b>
<b>RICKY ALLEN ADKINS, ET AL.,</b>	)	
	)	By: James P. Jones
Defendants.	)	Chief United States District Judge
	)	

*Thomas J. Bondurant, Jr., Chief, Criminal Division, United States Attorney's Office, Roanoke, Virginia, for the United States of America; Richard D. Kennedy, Sturgill & Kennedy, Wise, Virginia, for Defendant.*

In this RICO criminal prosecution involving allegations of public corruption, a defendant has moved to dismiss, asserting that a county does not constitute an “enterprise” under RICO. For the reasons set forth in this opinion, the motion will be denied.

**I**

The Indictment in this case charges James Ralph “Pete” Stilner, Jr., and others with violations of the Racketeer Influenced and Corrupt Organizations Act, 18

U.S.C.A. §§ 1961-1968 (West 2000) (“RICO” or the “Act”). Because this is a motion to dismiss, I rely on the facts charged in the Indictment.

The Indictment alleges that Buchanan County, a governmental entity and political subdivision of the Commonwealth of Virginia, along with its related agencies, boards, offices and entities, constitute an “enterprise” as defined in RICO. *See* 18 U.S.C.A. § 1961(4). The Indictment charges in Count One that the defendant—chairman of the Buchanan County Board of Supervisors and member from the Rock Lick District—was employed and associated with Buchanan County and knowingly participated in the enterprise through a pattern of racketeering activity, in violation of 18 U.S.C.A. § 1962(c). Count Two of the Indictment charges that the defendant conspired to violate 18 U.S.C.A. § 1962(c). *See* 18 U.S.C.A. § 1962(d). In particular, the Indictment alleges that the defendant and other public officials took bribes to influence the award of public contracts. The defendant has now moved to dismiss Counts One and Two of the Indictment, asserting that a county does not fall within RICO’s definition of an “enterprise.”

The parties have briefed the issues and presented oral argument, and the motion is now ripe for decision.

## II

RICO provides that “‘enterprise’ includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C.A. § 1961(4). The Act states that “[t]he provisions of this title [RICO] shall be liberally construed to effectuate its remedial purpose.” Pub. L. No. 91-452, § 904(a), 84 Stat. 941, 947 (1970). The Supreme Court has noted the broad meaning of the term “enterprise” as used in RICO, stating “[t]here is no restriction upon the associations embraced by the definition [of enterprise].” *United States v. Turkette*, 452 U.S. 576, 580 (1981).<sup>1</sup>

I first address the defendant’s contention that a county, being an integral part of a state, cannot fall under RICO’s definition of enterprise because a state itself cannot qualify as an enterprise. The defendant’s proposition rests on the much maligned opinion of *United States v. Mandel*, 415 F. Supp. 997, 1021-22 (D. Md. 1976) (holding that RICO enterprises were limited to private entities and that a state could not be an enterprise within the meaning of the statute). Counsel for the

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<sup>1</sup> The precise issue in *Turkette* was whether the term enterprise as used in RICO included both legitimate and illegitimate enterprises. The Court held that the term encompassed both types of enterprises, stating “[t]he language of the statute, however—the most reliable evidence of its intent—reveals that Congress opted for a far broader definition of the word ‘enterprise,’ and we are unconvinced by anything in the legislative history that this definition should be given less than its full effect.” *United States v. Turkette*, 452 U.S. at 593.

defendant acknowledged in oral argument that *Mandel* has been widely repudiated. Indeed, the Fourth Circuit has clearly expressed its disapproval of the reasoning in *Mandel*. See, e.g., *United States v. Long*, 651 F.2d 239, 241 (4th Cir. 1981) (holding that “RICO should be construed to include public entities as enterprises,” and that a South Carolina state senator’s legislative seat constitutes a RICO enterprise); *United States v. Altomare*, 625 F.2d 5, 7 (4th Cir. 1980) (holding that a county prosecutor’s office constitutes an enterprise). Therefore, the defendant’s argument that a county cannot fall under RICO’s definition of enterprise because a state itself cannot qualify as an enterprise is without merit.

I next address the defendant’s contention that a county cannot fall under the RICO definition of enterprise because a county is too amorphous a concept to constitute an enterprise under RICO. The defendant argues the concept of a “county” embraces such widely differing aspects as its population, its geographical boundaries, and its physical features, that it thus cannot be sufficiently restricted to qualify as a RICO enterprise. While the concept of a county does indeed include all of these things, a county is clearly a political subdivision of the state. See, e.g., Va. Code Ann. § 2.2-419 (Michie 2001) (referring to a county as a type of political subdivision). This designation of a county as a political subdivision permits it to fall

expressly within RICO's definition of enterprise as including "any. . . legal entity."  
18 U.S.C.A. § 1961(4).

In addition, it is important to note that the Indictment in this case does not merely allege that Buchanan County, Virginia, is the enterprise through which the alleged violation of RICO was accomplished. Rather, the Indictment refers to "Buchanan County, *along with its agencies, boards, offices and entities, constituted an enterprise . . .* as defined in Title 18, United States Code, Section 1961(4)." (Indictment, Count One ¶ 2) (emphasis added). There seems to be no clearer way to designate exactly what is meant by "county" other than to refer to the county's relevant constituent parts in this way. Further, it is settled that entities within county government qualify as a RICO enterprise. *See, e.g., United States v. Baker*, 617 F.2d 1060, 1061 (4th Cir. 1980) (holding that a county sheriff's department constitutes an enterprise).

### III

For the reasons stated, it is **ORDERED** that the Motion to Dismiss (Doc. No. 135) is denied.

ENTER: October 5, 2004

/s/ JAMES P. JONES  
Chief United States District Judge